IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.20948 of 2002
and
WPMP No.28966 of 2002

1. The Director Administration(D)
   Directorate-General of Health
   Services,
   Ministry of Health and Family Welfare
   (Lep. Division),
   Nirman Bhavan, New Delhi 110 011.

2. The Director,
   Central Leprosy Teaching and
   Research Institute,
   Chengalpattu 603 001.

3. The Union of India, rep. by its
   Secretary to Govt.,
   Min. of Finance, New Delhi. .. Petitioners

Versus

1. The Central Administrative Tribunal,
   Rep. by its Registrar,
   High Court Buildings,
   Chennai 104.

2. V.Ekambaram
3. E.Vasudevan
4. K.krishnamurthy .. Respondents

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Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari to call for the records of the first respondent dated 23.08.2001 pertaining to O.A.No.1186 of 2000 and quash the same.

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For petitioners : Mr.S.M.Deenadayalan,ACGSC

For R2 to R4 : Mr.S.Silambanan,S.C.
For Mr.N.Umapathy

O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The petitioners are aggrieved against the order of the first respondent – Tribunal dated 23.08.2001 passed in O.A.No.1186 of 2000. The respondents 2 to 4 who were employed as Cooks in the second petitioner Organisation preferred the Original Application praying for the relief to set aside the order passed by the first respondent in O.A.No.12034/13/99-Lep dated 17.12.1999 and direct the respondents to fix the scale of pay of the respondents 2 to 4 in the scale of pay of Rs.950-1500 with retrospective effect from 01.01.1986 and pay all the arrears to them.

2. According to the contesting respondents 2 to 4, they were all working as Cooks in the second petitioner Organisation, that there are various research institutes under the control of the first petitioner in various parts of India, that they were placed in the scale of pay of Rs.750-940, that the Fourth Pay Commission recommended the pay scale of Rs.950-1500 for the post of Cooks and therefore, they should also be placed in the scale of pay of Rs.950-1500 with effect from 01.01.1986. It was also claimed by the contesting respondents 2 to 4 that the Cooks working in the other research institutes under the control of the first petitioner were being placed in the scale of pay of Rs.950-1500 and therefore, their scale of pay should also be fixed in that scale. The claim was resisted by the petitioners herein by contending that the Fourth Pay Commission recommended replacing pay scale to Cooks in different Organisations, that there were as many as six scales of pay applicable to Cooks in different Organisations depending upon the nature of work load and other attending circumstances and therefore, the parity in wages claimed by the contesting respondents 2 to 4 cannot be granted.

3. The Tribunal took the view that the second petitioner in its letter dated 05.01.1994 strongly recommended for revision of scale of pay of the Cooks in its Organisation on par with the scale of pay applicable to the Cooks in the Central Health Institutions, which scale was Rs.775-1025 and since the second petitioner who is the Administrative Head has recommended for such parity in payment, it should be taken that the applicants were also similarly situated persons. On that basis, the Tribunal ultimately declared that the applicants were entitled to the scale of pay of Rs.950-1500 and to

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the corresponding pay scale as per the recommendations of the Fifth Pay Commission. The Tribunal also directed that the grant of monetary benefits should be limited for a period of one year prior to the date of the application, though they were notionally entitled to the higher pay with effect from 01.01.1986 based on the Fourth Pay Commission's recommendation. The petitioners were directed to implement the order within a period of two months from the date of the order.

4. Assailing the order of the Tribunal, Mr.Deenadayalan, learned counsel appearing for the petitioners placed before us the First Schedule containing Part-A of the recommendations of the Fourth Pay Commission which has provided the revised scales for the posts carrying the present scales in Groups 'D', 'C' and 'B' except the posts for which different revised scales were separately notified. The learned counsel contended that as per the Fourth Pay Commission recommendation, even amongst Group 'D' employees to which category the contesting respondents 2 to 4 belong, there were different levels of scales provided and that for such pre-revised scales, the necessary revised scales of pay have been prescribed which vary from case to case and therefore, the claim of the applicants by merely stating that their counterparts in some other Central Health Institutions were being paid higher scale of pay cannot alone be the basis for ordering pay parity as has been done by the Tribunal. According to the learned counsel, in the absence of any acceptable material evidence to state that the nature of work and duties performed by the applicants are identical in all respects with the comparable establishments, there was no scope for granting the pay parity as claimed by the contesting respondents 2 to 4. The learned counsel therefore contended that the order of the Tribunal in issuing directions for the revision of the scale of pay of respondents 2 to 4 is liable to be set aside. The learned counsel also relied upon the decision reported in *(2003)5 SCC 188 [Orissa University of Agriculture and Technology and another vs. Manoj K. Mohanty]* in support of his submissions.

5. As against the above submissions, Mr.S.Silambanan, learned Senior Counsel appearing for respondents 2 to 4 contended that since the second petitioner was their immediate employer who had certified that they were entitled for the pay on par with the similar Cooks employed in the other Central Health Institutions, there was nothing more to be examined by the Tribunal for granting the relief and therefore, the order of the Tribunal does not call for interference.

6. Having heard the learned counsel for the respective parties, we are constrained to state that if the claims of respondents 2 to 4 were to be countenanced, there should have been necessary material evidence to support their claim that they were performing the very same nature of duties as a Cook as is being performed by their

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counterparts in any other comparable establishments working under the control of the first petitioner. At the outset, it will have to be stated that when respondents 2 to 4 claimed parity with their counterparts in the other Central Health Institutions, the burden was upon respondents 2 to 4 to have established before the Tribunal that such a parity claimed by them, both on work basis as well as salary wise was fully established and that they are entitled for being treated on par with their counterparts.

7. In the case on hand, we find from the order of the Tribunal a reference to an attempt made by the second petitioner who sought for the details about the nature of the work of the Cooks in the National Tuberculosis Institute, Bangalore and who informed them that in their Institute, there is no post of Kitchen Assistant and that the pre-revised pay scale of Cooks was Rs.200-250 and the revised pay scale was Rs.775-1025. As far as the duties are concerned, it was stated therein that cooking and looking after other messing necessities in the Head Quarters as well as in the field are the nature of duties performed by such Cooks. Apart from the above reference found in the order, the only other reliance placed upon by the Tribunal was on the letter of the second petitioner dated 05.01.1994 addressed to the first petitioner, wherein the second petitioner strongly recommended for the revision of scales of the Cooks to the revised scale of Rs.775-1025 with effect from 01.01.1986. Merely based on the above references, we are at a loss to understand as to how the Tribunal has come to a conclusion that the nature of duties performed by the Cooks, namely, respondents 2 to 4 in the second petitioner Organisation was identical in all respects with the Cooks in the other Central Health Institutes functioning under the control of the first petitioner. Such an abstract conclusion reached by the Tribunal without any basic evidence placed before it at the instance of respondents 2 to 4 cannot be sustained. In this context, when we refer to the First Schedule and Part A of the Fourth Pay Commission recommendation, we find that for the pre-revised scale of Rs.196-232 and Rs.200-240 in which the pre-revised scale of respondents 2 to 4 were fitted, the corresponding revised scale of pay under the Fourth Pay Commission recommended was Rs.750-940. The scale of Rs.196-232 as well as Rs.200-240 was thus clubbed together while recommending the revised common scale of Rs.750-940. That apart, we also find there were posts carrying seven other scales of pay. In fact, with the starting scale of pay of Rs.200/- there were three scales which were as under:

(a) 200-3-206-4-234-EB-4-250
(b) 200-3-212-4-232-EB-4-240-5-250
(c) 210-4-226-EB-4-250
(d) 200-3-212-4-232-EB-4-240

The above four scales of pay had common revised scale of Rs.775-1025. A perusal of the four different scales mentioned above disclose that

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there were slight variations in the rate of increment both before and after the stage of Efficiency Bar (EB). That apart, there were three other pre-revised scales with the starting basic of Rs.210/-, namely,
(a) 210-4-250-EB-5-270
(b) 210-4-250-EB-4-270
(c) 210-4-226-EB-4-250-EB-5-290
with a common revised scale of Rs.800-1150. Only in groups 'C' and 'B', there were certain other scales of pay consisting of Rs.225-308, Rs.225-350, Rs.260-350, Rs.260-400 and Rs.290-350 which had the corresponding revised scale of pay of Rs.825-1200, Rs.950-1400 and Rs.950-1500. Thus a perusal of the Fourth Pay Commission recommendation disclose that even in the same category falling under Groups 'D', 'C' and 'B', there were different pre-revised scales of pay, for which after clubbing certain scales of pay, common revised scales of pay came into being, which only disclose that even amongst common categories, by virtue of the nature of duties performed and various other distinguishing features, such different scales of pay were recommended by the pay commission in their recommendations.

8. In such circumstances, in our considered opinion, it is for respondents 2 to 4 to establish before the Tribunal with acceptable material evidence to show that the nature of duties, responsibilities and other factors existing in the second petitioner establishment as well as other comparable establishments working under the control of the first petitioner were identical in all respects and therefore, respondents 2 to 4 while working as Cooks in the second petitioner establishment are fully entitled for the pay parity on the basis of "equal pay equal work" concept on par with the Cooks working in some other Central Health Institutes functioning under the first petitioner. As stated by us earlier, the reference to either the letter of the second petitioner dated 05.01.1994 or the mere statement of the National Tuberculosis Institute, Bangalore, cannot form the basis for the grant of the relief as has been directed by the first respondent – Tribunal.

9. In this context, it will be worthwhile to refer to the decision of the Hon'ble Supreme Court reported in *(2003) 5 SCC 188* (cited supra) wherein, the Hon'ble Supreme Court has set out as to how and what are the relevant considerations to be examined in order to apply the principle of "equal pay for equal work" and thereby granting pay parity with the concerned claims. Paragraph Nos.10 and 12 of the decision of the Hon'ble Supreme Court are relevant for the present purpose, which read as under:

> "10. The High Court before directing to give regular pay scale to the respondent w.e.f. September 1997 on the principle of "equal pay for equal work" did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the

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nature of work done by the regularly appointed Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay scale could not be given that too without examining the relevant factors to apply the principle of "equal pay for equal work". It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing them with the regularly recruited Junior Assistants. It cannot be disputed that there were neither necessary averments in the writ petition nor was any material placed before the High Court so as to consider the application of the principle of "equal pay for equal work".

12. Before giving such direction, the High Court also did not keep in mind as to what would be its implications and impact on the other employees working in the appellant University. From the averments made in the writ petition extracted above, it is clear that no details were given and no material was placed before the High Court for comparison in order to apply the principle of "equal pay for equal work". This Court in *State of Haryana v. Jasmer Singh* observed that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization."

10. Applying the above said ratio to the case on hand, we are constrained to state that with the meagre statements placed before the first respondent-Tribunal, the Tribunal ought not to have ventured to grant the relief as has been done in the impugned order. A perusal of Section 22 of the Administrative Tribunal Act disclose that under Sub Clause 3, the Tribunal has got ample powers as is vested in a civil Court under the Code of Civil Procedure, while trying a suit, in respect of the matters, namely, summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits and such other ancillary powers etc. In such circumstances, if really respondents 2 to 4 wish to establish their claim that they are entitled to pay parity on par with Cooks in other establishments working under the first petitioner - Directorate, it is for respondents 2 to 4 to take necessary steps for proving their case. Since such an exercise was not made before the first respondent-Tribunal and in the interest of justice, we feel that even when we hold that the impugned order of the Tribunal cannot be sustained, respondents 2 to 4 should be extended an opportunity to

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let in necessary evidence both oral as well as documentary before the first respondent – Tribunal in support of their claim. With that view, we set aside the order impugned in this writ petition and remit the matter back to the first respondent – the Tribunal for holding a de nova enquiry, by permitting respondents 2 to 4 as well as the petitioners to let in necessary evidence both oral as well as documentary in support of their respective stand and thereafter pass appropriate orders on merits.

With the above directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

gms

To

The Registrar,
Central Administrative Tribunal,
High Court Buildings, Chennai -104.

+1cc to M/s.Silambanan Associates Sr 47808

+1cc to Mr.S.M.Deenadayalan, ACGSC SR 47638

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